

**HEARING HEARD IN PRIVATE\***

\*The Committee has made a determination in this case that includes some private information.  
That information has been omitted from this text.

**McKENNA, Peter John**

**Registration No: 262484**

**HEALTH COMMITTEE**

**NOVEMBER 2018 – DECEMBER 2020**

**Most recent outcome: Suspended Indefinitely\*\***

\*\* See page 4 for the latest determination

Peter John MCKENNA, a dentist, BDS Lond 1975 was summoned to appear before the Health Committee on 23 November 2018 for an inquiry into the following charge:

**Charge**

“That, being a registered dentist:

1. You have an adverse health condition as specified in Schedule A<sup>1</sup>.

AND by reason of the facts alleged your fitness to practise is impaired by reason of adverse health.”

Mr McKenna was not present and was not represented. On 23 November 2018 the Chairman announced the findings of fact to the Counsel for the GDC:

“The hearing was held in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006 (the “Rules”).

**[IN PRIVATE]**

Accordingly, the Committee’s finding in relation to the charge is that:

1.	<i>You have an adverse health condition as specified in Schedule A.</i>
	Proved.

We move to Stage Two.”

On 23 November 2018 the Chairman announced the determination as follows:

“The hearing was held in private under Rule 53 of the General Dental Council (Fitness to Practise) Rules 2006.

**[IN PRIVATE]**

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<sup>1</sup> Schedules are private documents that cannot be disclosed to the public.

Accordingly, the Committee, having found that Mr McKenna's fitness to practise is currently impaired by reason of adverse physical or mental health, directs that his registration be suspended for a period of 12 months with a review.

The Committee now invites submissions on the question of an immediate order.

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The Committee is satisfied that it is necessary for the protection of the public and is otherwise in the public interest to order that Mr McKenna's registration be suspended forthwith under s 30(1) of the Dentists Act 1984. In reaching its decision, the Committee balanced the public interest with Mr McKenna's interests. It would be inconsistent with the decision the Committee has made not to make an immediate order.

The effect of this order is that Mr McKenna's registration is suspended immediately. Unless he exercises his right of appeal, the 12 month period of suspension will commence 28 days from when notification of this decision is served on him. Should he exercise his right of appeal, this immediate order will remain in force pending the disposal of the appeal.

The interim order on Mr McKenna's registration is hereby revoked.

That concludes the hearing."

At a review hearing on 25 November 2019 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to Section 27C (2) of the Dentists Act 1984 (as amended) ('the Act'). Mr McKenna is neither present nor represented in this hearing. Mr Patience appeared on behalf of the General Dental Council (GDC).

### **Preliminary Matters**

#### Application for hearing to be held in private

The Committee considered Mr Patience's application pursuant to Rule 53 for the hearing to be held in private as the matters today relate directly to Mr McKenna's health. The Committee heard and accepted the advice of the Legal Adviser.

The starting point for the Committee is for all hearings to be held in public as it is in the interests of justice to do so. However, a hearing may be heard in private where it concerns matters that are inextricably linked to the health or private and family life of the Registrant concerned, under Rule 53(2) of the General Dental Council (Fitness to Practise) Rules Order of Council ("the Rules"). The Committee agreed that as the matters in this case relate solely to Mr McKenna's health, it was in his interests that the hearing should be heard in private. The Committee therefore acceded to the application.

#### Decision on service of the Notification of Hearing

The Committee first considered whether Mr McKenna had been sent notification of the hearing in accordance with Rules 28 and 65 of the Rules. It noted the telephone note dated 14 October 2019 of a call from the GDC to [IN PRIVATE], who confirmed that Mr McKenna was a permanent resident there, and that this was therefore the registrant's last known address. The Committee saw a copy of the Notification of Hearing, dated 14 October 2019, which was sent by Special Delivery. The Committee was satisfied that the letter contained proper notification of today's hearing, including its date, time and location, as well as notification that the Committee had the power to proceed with the hearing in Mr McKenna's

absence. The Committee had before it a copy of a Royal Mail track and trace document which showed that the notice of hearing letter was delivered on 15 October 2019 and signed for. The notice of hearing was also sent via email to Mr McKenna on 14 October 2019. The Committee was satisfied that the notification of hearing had been served in accordance with the Rules.

#### Decision on proceeding in the Registrant's absence

The Committee then considered whether to proceed to review this case in the absence of Mr McKenna. The Committee bore in mind that its discretion to proceed with a hearing in the absence of a respondent should be exercised with the utmost care and caution. In making its decision the Committee took account of the principles set out in *R v Hayward* and *R v Jones, GMC v Adeogba & Visvardis [2016] EWCA Civ 162*. The Committee accepted the advice of the Legal Adviser.

[IN PRIVATE]. The Committee was of the view that there is a public interest in conducting this review today, and an adjournment is unlikely to secure his attendance. A review is required in order to ensure the public remains protected given the nature of the matters under consideration. The Committee therefore determined that it was appropriate to proceed with the review hearing in Mr McKenna's absence.

#### **Background**

[IN PRIVATE]. Mr McKenna's fitness to practise was found to be impaired [IN PRIVATE] and his registration was suspended for a period of 12 months with a review to take place prior to the expiry of the order.

#### **Submissions**

[IN PRIVATE]

Mr Patience told the Committee that Mr McKenna's fitness to practise remains impaired [IN PRIVATE]. He stated that the order of suspension should be extended for 12 months with a review hearing.

#### **Committee's decision on impairment**

It is the role of the Committee today to undertake a comprehensive review as per the request of the GDC. In so doing, the Committee had careful regard to all the documentary evidence before it and took account of the submissions made by both parties. The Committee also heard and accepted the advice of the Legal Adviser. The Committee had regard to the *GDC's Guidance for the Practice Committees*, including *Indicative Sanctions Guidance* (October 2016) (the Guidance).

In making its decision, the Committee first sought to determine whether Mr McKenna's fitness to practise is still impaired [IN PRIVATE]. It exercised its independent judgement and was not bound by the decision of the previous committee. It balanced Mr McKenna's needs with those of the public and bore in mind that its primary duty is to protect the public, including by maintaining public confidence in the profession and declaring and upholding proper standards and behaviour.

[IN PRIVATE]

The Committee therefore determined that Mr McKenna's fitness to practise is currently impaired [IN PRIVATE].

**Committee's decision on sanction**

The Committee next considered what sanction, if any, should be imposed on Mr McKenna's registration. It bore in mind the need to protect patients and the public interest. The Committee once again had regard to the principle of proportionality, weighing the interests of the public with Mr McKenna's own interests.

The Committee was satisfied that taking no action and allowing the current suspension to expire would not protect the public. The Committee was also satisfied that the imposition of conditions would not be workable [IN PRIVATE] and would not be sufficient to protect the public. The Committee therefore determined that only a further suspension was sufficient and proportionate [IN PRIVATE]. That suspension needed to be for a further 12 months in the circumstances with a review before the end.

That concludes this hearing."

At a review hearing on 1 December 2020 the Chairman announced the determination as follows:

"This is a resumed hearing pursuant to section 27C of the Dentists Act 1984 (as amended) ('the Act') to review the order of suspension for 12 months which was imposed on Mr McKenna's registration by the Health Committee ("the Committee") in November 2019. Ms Headley presented the case for the General Dental Council ("the GDC"). Mr McKenna was neither present in the hearing nor represented in his absence. The entire hearing was conducted remotely via video link in line with the GDC's current practice.

**Preliminary Matters****Application to proceed in private**

The Committee considered an application by Ms Headley, made pursuant to Rule 53(2)(a), that this hearing should be conducted in private. Rule 53 provides that:

- (1) "A hearing before a Committee shall be conducted in public except where paragraph (2) applies.
- (2) All or part of a hearing may be held in private
  - a. where the interests of the parties or the protection of the private and family life of the respondent or any other person so requires;"

Ms Headley submitted that this matter relates wholly to Mr McKenna's health and in those circumstances it is not unusual for those matters to be heard in private. She submitted that the hearing should be heard in private.

The Committee accepted the advice of the Legal Adviser who advised that Mr McKenna has the right to privacy and that this hearing should be held in private. It determined that the hearing will proceed in private in its entirety to protect Mr McKenna's private and family life.

**Submissions on service of notice of hearing**

Ms Headley submitted that the notification of this hearing had been served on Mr McKenna in accordance with Rules 28 and 65 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006 ("the Rules").

**Decision on service of notice of hearing**

The Committee received a bundle of documents which contained a copy of the notification of today's review hearing, dated 20 October 2020, that was sent to Mr McKenna's registered address by special delivery. The Committee noted that the notification provided Mr McKenna with more than the 28 days required by the Rules. It was satisfied that the letter contained proper notification of today's hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with the hearing in Mr McKenna's absence. The Committee noted that Rule 65 permitted the notification to be sent by post and proof of service to be confirmed by Royal Mail. It also noted that the GDC did not have to prove that the registrant received the notification as it is a registrant's responsibility to ensure that their registered address on the Register was kept up to date.

The Committee had sight of a Royal Mail Track and Trace proof of delivery extract, which displayed the same tracking number as on the notification of hearing letter sent to Mr McKenna's registered address. This showed that the letter was delivered on 21 October 2020 at 10:15am and signed for in the name "MCKENNA". [Private text omitted] The Committee also had sight of the Royal Mail Track and Trace proof of delivery extract with the same tracking number which showed that the letter to the alternative address was delivered on 21 October 2020 at 1.10pm and signed for.

The Committee was satisfied that the notice of this review hearing had been served on Mr McKenna in accordance with the rules.

**Application to proceed with the hearing in the absence of the registrant**

Ms Headley made an application for this hearing to proceed in Mr McKenna's absence pursuant to Rule 54 of the Rules. She referred the Committee to the cases of *R v Jones* and *GMC v Adeogba*.

**Decision on proceeding with the hearing in the absence of the registrant**

The Committee noted the email dated 26 October 2020 [Private text omitted]

In these circumstances there is no need to consider an adjournment or to adjourn this hearing. The Committee also noted that the current order is due to expire on 25 December 2020. It considered that in the circumstances of this case, it is fair, appropriate and in the public interest for the hearing to proceed. The Committee determined to proceed with the review hearing in the absence of Mr McKenna.

**Background and Summary of Findings**

Mr McKenna first registered as a dentist with the GDC in 1975. [Private text omitted]

Mr McKenna's fitness to practise was found to be impaired by reason of his adverse health and his registration was suspended for a period of 12 months with a review to take place prior to the expiry of the order.

**First Review**

On 25 November 2019, the PCC reviewed the case. It found that Mr McKenna's fitness to practise remained impaired by reason of his adverse health. Its reasons as set out in its determination are as follows:

[Private text omitted]

Mr McKenna's registration was suspended for a further period of 12 months with a review prior to the expiry of the order.

### **Submissions on behalf of the GDC**

In respect of compliance, Ms Headley submitted that there is no reason to believe that Mr McKenna has practised dentistry during the period of his suspension.

In relation to impairment Ms Headley submitted that the Committee should have regard to the cases of *Abrahaem* and *Bamgbelu*.

[Private text omitted] the Committee should conclude that Mr McKenna's fitness to practise is impaired by reason of his adverse health. Ms Headley submitted that the appropriate course of action is for Mr McKenna's registration to be suspended indefinitely. She submitted that the criteria for the imposition of an indefinite suspension are met in this case.

### **Decision of the Committee**

#### *Current Impairment*

In considering whether Mr McKenna's fitness to practise is currently impaired, the Committee bore in mind that this is a matter for its own independent judgement. It also had regard to its duty to protect the public, declare and uphold proper standards of conduct and competence and maintain public confidence in the profession. The Committee accepted the advice of the Legal Adviser.

[Private text omitted] Furthermore, the Committee was of the view that a finding of current impairment is in the public interest in order to maintain public confidence in the profession and uphold the standards of the profession. [Private text omitted]

The Committee determined that Mr McKenna's fitness to practise remains currently impaired by reason of his adverse health.

#### *Restriction*

The Committee considered what restriction, if any, to impose on Mr McKenna's registration. It reminded itself that the purpose of restrictions is not to be punitive although it may have that effect. The Committee bore in mind the principle of proportionality.

The Committee first considered whether to terminate the current order of suspension or allow it to lapse. It was of the view that, having concluded that there is current impairment and given the circumstances behind that decision, some form of restriction is required to protect patients and the public interest.

The Committee then considered whether to impose a period of conditional registration however it considered that conditions would not be workable or appropriate at this stage [Private text omitted]

The Committee concluded that suspension remained the appropriate restriction to impose on Mr McKenna's registration. It considered whether a 12 month suspension was sufficient or whether to suspend Mr McKenna's registration indefinitely. [Private text omitted]

The Committee considered that the criteria for an indefinite suspension are met in this case. It noted from section 27C(1)(d) that a person's registration in the register can be suspended indefinitely if "*the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and the direction is made not more than two months before the date on which the period of suspension would otherwise expire.*" The Committee

noted that Mr McKenna's registration has now been suspended for two years, having first been suspended for 12 months from 23 November 2018 and then a further 12 months from 25 November 2019. In addition, the Committee noted that the current order is due to expire on 25 December 2020 which is less than 28 days from today.

The Committee therefore directs that Mr McKenna's registration in the register be suspended indefinitely pursuant to section 27C(1)(d) of the Dentists Act 1984, as amended.

That concludes this determination."